

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN, *et al.*,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

WILLIAM CROUCH, *et al.*,

Defendants.

CIVIL ACTION NO. 3:20-cv-00740
HON. ROBERT C. CHAMBERS

**JOINT MOTION FOR EXTENSION OF DEADLINE TO FILE A REPLY BRIEF, AS TO
STIPULATED SCOPE OF CLAIMS, AND FOR PERMISSION TO FILE A SURREPLY**

Defendants William Crouch, Cynthia Beane, and the West Virginia Department of Health and Human Resources, Bureau of Medical Services (the “moving Defendants”)¹ and Plaintiffs, through counsel, jointly move the Court for an order: (1) extending the deadline for the moving Defendants to file their reply in support of their motion to dismiss to March 26, 2021; (2) acknowledging the parties’ stipulation as to the scope of Plaintiff Christopher Fain’s claims; and (3) granting Plaintiffs permission to file a sur-reply to the moving Defendants’ motion to dismiss should the moving Defendants’ reply make arguments or raise issues pertaining to the stipulated narrowing of claims. In support, the parties state the following:

1. On November 12, 2020, Plaintiffs filed this proposed class action lawsuit alleging discrimination against transgender Medicaid and state employee health plan participants and bringing claims under the Equal Protection Clause of the Fourteenth Amendment to the U.S.

¹ The other Defendants in this case, through counsel, confirmed that they do not oppose this motion.

Constitution, Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116, and the comparability and availability requirements of the federal Medicaid Act, 42 U.S.C. §§ 1396a(a)(10)(A)-(B). (ECF No. 1.) The claims are based on two factual predicates; first, denial of hormone therapy; and second, denial of surgical coverage.

2. On January 11, 2021, three separate motions to dismiss were filed—one by the moving Defendants; one by Defendant Cheatham; and one by Defendant The Health Plan of West Virginia, Inc. (ECF Nos. 20-25.)

3. The moving Defendants filed an additional motion to dismiss on February 2, 2021. (ECF Nos. 32-33.)

4. Plaintiffs responded to the motions by Defendants Cheatham and The Health Plan of West Virginia, Inc. (ECF Nos. 39-40.)

5. After reviewing the moving Defendants' second motion to dismiss, Plaintiffs' counsel and counsel for the moving Defendants met and conferred and agreed upon limited informal discovery that might inform the scope of Plaintiff Christopher Fain's claims against the moving Defendants.

6. The parties so informed the Court, seeking an extension of Plaintiffs' time to respond to both of the moving Defendants' motions so that the informal discovery could take place. (ECF No. 34.)

7. The Court granted the request, setting Plaintiffs' response date at March 2, 2021, and later setting the moving Defendants' reply deadline at March 19, 2021. (ECF Nos. 35, 52.)

8. Although the parties were able to exchange certain information before the extended deadline, the moving Defendants were unable to produce all information requested and, accordingly, Plaintiffs filed their response brief on March 2, 2021. (ECF No. 50.)

9. On March 12, 2021, the moving Defendants produced the balance of the requested informal discovery.

10. Subsequently, based upon the information exchanged through informal discovery, on March 18, 2021, Plaintiff Christopher Fain agreed, and along with the moving Defendants stipulated, that Mr. Fain would limit the scope of his claims in this case such that he would not seek relief on any of his claims based on any denial of hormone therapy allegations in the Complaint. (ECF No. 1.)

11. Thus, the moving Defendants' motion to dismiss would be targeted only at Mr. Fain's claims related to surgical coverage.

12. In light of the stipulated narrowed scope of Mr. Fain's claims, the moving Defendants require a modest extension of their March 19 deadline to file their reply in support of their motion to dismiss. The moving Defendants request that the deadline be extended to March 26, 2021.

13. Further, to the extent the moving Defendants' reply raises arguments or issues related to the narrowed scope of Mr. Fain's claims, Plaintiffs request leave to file a sur-reply of no more than 10 pages within one week (7 days or April 2, 2021) of Defendants filing their reply.

14. There is good cause to grant the requested relief.

15. First, extending the moving Defendants' deadline for filing a reply will allow the moving Defendants to tailor their brief to Mr. Fain's newly narrowed claims.

16. Second, permitting Plaintiffs to file a sur-reply limited to arguments or issues the moving Defendants may raise pertaining to the narrowed scope of Mr. Fain's claims will result in both parties having the opportunity to address the impact, if any, Mr. Fain's narrowed claims have with respect to his case.

Accordingly, for all of the reasons stated above, the parties respectfully request that the Court: (1) acknowledge the parties' stipulation that Mr. Fain will not seek relief in this case related to the allegations regarding lack of insurance coverage for hormone therapy in the Complaint (ECF No. 1); (2) given the newly stipulated scope of Mr. Fain's claims, set March 26, 2021 as the deadline for Defendants William Crouch, Cynthia Beane, and the West Virginia Department of Health and Human Resources, Bureau of Medical Services to file their reply brief in support of their motion to dismiss; and (3) permit Plaintiffs to file a sur-reply of no more than 10 pages by April 2, 2021, if and only if Defendants' reply makes arguments or raises issues related to the narrowed scope of Mr. Fain's claims.

Dated: March 19, 2021

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